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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,212	01/16/2002	Robert Hagen	LIFE-033	2190

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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/052,212

Applicant(s)

HAGEN ET AL.

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 97-113, 115-125, 133-136 and 138-142 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 97-112 is/are allowed.
- 6) ☒ Claim(s) 113, 115-125, 133-136 and 138-142 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 113, 115-125, 133-136 and 138-142 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pugh (USP 5,736,103), Simons et al. (USP 5,971,941) or WO 94/10558).

WO 94/10558 teaches an electrochemical sensor comprising a tubular magazine(4) containing a plurality of test elements(3) that are urged upwards by a spring(5). Page 4 in the second full paragraph teaches a sealing ring(15) and a desiccant(16) to maintain a substantially anhydrous environment which has been read on the claimed "substantially air and moisture tight seal". The claimed "sealing ridge and a corresponding groove" has been read on the taught recessed sealing ring(15).

Pugh teach a meter used in conjunction with a hollow, frustum shaped disposable devices to measure the concentration of an analyte in fluid. Figures 5-6 teach the mating and storage of the devices in a relationship of a "continuously reduced cross-sectional area to select a single test element at a time" . Test meter(30) determines the amount of analyte. The first paragraph in column 7 teaches glucose as analyte of interest.

Simons et al. teach a method, apparatus and kit for detection of blood glucose. Figure 5a teaches a glucose meter (66) that reads the results of the test cartridges(100) in recess(171). The cassette holds a plurality of the cartridges under pressure from curved spring(160a or 160b) which has been read on the claimed

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"spring loaded".

Claims 113, 115-125, 133-136 and 138-142 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Bottwein et al.

Bottwein et al. teaches a magazine for the storage and dispensing of test elements. Col. 7 lines 24+ teach the magazine is contained within a moisture tight housing which has been read on the claimed sealed and substantially air and moisture tight housing. Ejector slide(14) has been read on the claimed urging element to apply a force to the strips. Col. 1 lines 20+ teach it is known to use either colorimetric strips or electrochemical devices. It is inherent the device and magazine would come with instructions.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 113, 115-125, 133-136 and 138-142 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44, 75-78 and 1-14 of copending Application No. 10/116,086 and

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10/116,386 respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to a means for dispensing a single test strip.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Allowable Subject Matter***

Claims 97-112 are allowed.

The following is an examiner's statement of reasons for allowance: The cited prior art fails to teach or anticipate the claimed "... base configured to store a plurality of test strips, wherein the height of said base is .... said device further comprises a surface having a sealing ridge and surfaced .... are mated together".

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

Applicant's arguments with respect to claims 113, 115-125, 133-136 and 138-142 have been considered but are moot in view of the new ground(s) of rejection. The amendments "... permissive of only a single test strip at a time ..." required a new search and further consideration that resulted in the above new grounds of rejection.

### ***Conclusion***

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lyle A Alexander  
Primary Examiner  
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A handwritten signature in black ink, appearing to be 'Lyle A. Alexander', written over the printed name.